



## STAFF REPORT

DATE: SEPTEMBER 18, 2012  
TO: HONORABLE MAYOR AND CITY COUNCIL  
FROM: ROD FOSTER, CITY MANAGER  
PREPARED BY: DEAN DERLETH, CITY ATTORNEY  
SUBJECT: APPROVAL OF SUBLEASE AGREEMENT AND CONSENT TO SUBLEASE AGREEMENT

### RECOMMENDED ACTION

It is recommended that the City Council take the following actions: (1) approve the Sublease Agreement between the City and Ernest and Gary Grossich; (2) approve the Consent to Sublease Agreement between the City, Union Pacific Railroad and Ernest and Gary Grossich.

### GOAL STATEMENT

The proposed action will support the City's goal to achieve a final settlement of litigation matters.

### BACKGROUND

As reported out of closed session on August 21, 2012, the City Council has reached a settlement agreement with Gary Grossich and Ernest Grossich involving two lawsuits and a claim. As part of the settlement, the parties agreed to allow the Grossichs to enter into a sublease agreement for a portion of the right-of-way property owned by Union Pacific and leased by the City. The Sublease Agreement and the Consent to Sublease require open session consideration and approval.

### ISSUES/ANALYSIS

The Sublease Agreement, attached to this report, provides the terms of a sublease between the City and the Grossichs. The terms include that the City will sublease to the Grossichs part of the right-of-way adjacent to the Grossichs property, and the sublease area barrier will generally run parallel to the bike path, at a point that is 7 feet from the edge of the bike path. The City will treat the long term storage of automobiles and auto parts/accessories as a legal non-conforming use, subject to all legal restrictions on legal non-conforming uses, including applicable Colton Municipal Code provisions. In addition, the City will construct an 8 foot block wall to divide and shield the sublease area from the remainder of the right-of-way and the public bike path, with the Grossichs contributing a portion of the cost. The sublease will last for the duration of

the City's lease term. If the City extends its lease with Union Pacific, the sublease will also be extended. The Grossichs will pay to the City the same lease rate that the City pays to Union Pacific. Grossich will be responsible for repairing and maintaining the sublease area barrier on the sublease side, including the integrity of the barrier footings, and will be required to repair any damages arising out of or incident to the acts, omissions or willful misconduct of Grossich or their employees, agents, representatives, invitees or trespassers on the sublease area. The City will be responsible for repairing and maintaining the sublease area barrier on the public bike path side, including maintaining the structural integrity of the soil surrounding the footings. Grossich will obtain insurance for the sublease area, and will indemnify the City against any liability for injuries occurring on the sublease area, or in connection with the sublease area barrier to the extent caused by their failure to maintain or repair the barrier.

The Consent to Sublease Agreement will provide Union Pacific's written authorization for the sublease. As a condition to Union Pacific's consent, they require that the Grossichs' waive any claim of prescriptive rights against the right-of-way property and recognize Union Pacific's ownership of the right-of-way.

## **FISCAL IMPACTS**

As part of the sublease, the Grossichs will pay rent to the City for the sublease area at a rate equal to the amount the City pays to Union Pacific Railroad for its lease on that portion of the right-of-way property. The City's estimated cost for construction of the barrier wall will be approximately \$43,000. The Grossichs will contribute up to \$5,635 of the cost of constructing the wall. The City will also install a curb-cut off on 10th Street for access to the public alley and the Grossichs property, which is estimated to cost approximately \$1,500. Repair and maintenance costs are not expected to be significant in the foreseeable future.

## **ALTERNATIVES**

1. Provide alternative direction to staff.

## **ATTACHMENTS**

- (1) Sublease Agreement between City of Colton and Ernest Grossich and Gary Grossich
- (2) Consent to Sublease Agreement between Union Pacific Railroad, City of Colton, Ernest Grossich and Gary Grossich

ATTACHMENT 1

SUBLEASE AGREEMENT BETWEEN  
CITY OF COLTON AND ERNEST GROSSICH AND GARY GROSSICH

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**SUBLEASE AGREEMENT**

by and between

**CITY OF COLTON, CALIFORNIA,**  
as Sublessor

and

**ERNEST GROSSICH, INDIVIDUALLY AND AS TRUSTEE OF THE GROSSICH  
FAMILY TRUST, AND GARY GROSSICH,**  
as Sublessee

Dated as of [June 1, 2012]

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## SUBLEASE AGREEMENT

**THIS SUBLEASE AGREEMENT** ("Sublease Agreement"), dated as of [June 1, 2012], is by and between the **CITY OF COLTON**, a general law city and municipal law corporation, duly organized and existing under and by virtue of the laws of the State of California, as Sublessor (the "City"), and **ERNEST GROSSICH, Individually and as Trustee of the Grossich Family Trust, and GARY GROSSICH**, as Sublessees (the "Grossiches");

### WITNESSETH:

A. Whereas Union Pacific owns certain right-of-way property within the City, and on September 11, 2000, the City and Union Pacific Railroad Company ("Union Pacific") entered into a Lease Agreement for this right-of-way property for beautification and weed control ("Lease Agreement"). On April 14, 2004, the City and Union Pacific entered into a Supplement to Lease Agreement, wherein the City leased the right-of-way for a hike and bike trail, beautification, and purposes incidental thereto, for a period of 20 years, to commence on January 1, 2004 and expire on December 31, 2023, for a total rent of Twenty Thousand dollars (\$20,000) ("Supplement to Lease Agreement"), which amount the City paid. A copy of the Lease Agreement is attached hereto as Exhibit "A" and is incorporated herein by reference. A copy of the Supplement to Lease Agreement is attached hereto as Exhibit "B" and is incorporated herein by reference.

B. Whereas the Grossiches own two parcels of property within the City that are adjacent to the Union Pacific right-of-way at 320 East F Street, which parcels are identified as APN 0162-105-01 and APN 0162-105-04 (the "Grossich Property"), and whereas the Union Pacific right-of-way parcel that is adjacent to the Grossich Property and a part of the City's lease is identified as APN 0162-105-05 (the "Subject Property"). The Subject Property and the Grossich Property together form a triangle-shaped parcel that is generally bound by 10th Street, F Street and Colton Avenue in the City.

C. Whereas on May 4, 2007, the City filed a Complaint against the Grossiches, in a case entitled *City of Colton v. Ernest Grossich* S.B.S.C. Case No. CIVSS701112 (the "First Action"). The Grossiches filed a Cross-Complaint in the First Action against the City and Union Pacific. On December 20, 2010, the Court entered a Judgment and Permanent Injunction in favor of the City on its Complaint, and in favor of the City and Union Pacific on the Grossiches' Cross-Complaint in the First Action. On February 18, 2011, the Grossiches filed a notice of appeal of the First Action, which appeal is pending in the Court of Appeal of the State of California, Fourth Appellate District, Division Two, Case No. E053120.

D. Whereas on November 30, 2009, the Grossiches filed a Complaint against the City and certain current and former City officials in a case entitled *Gary Grossich et. al. v. City of Colton et. al.*, S.B.S.C. Case No. CIVDS917057 (the "Second Action"), which case is currently pending in the Superior Court. The City, the Grossiches, Union Pacific and the named City officials are settling the First Action and Second Action, and as a term of the settlement, the City and the Grossiches agreed to enter into this Sublease Agreement whereby the Grossiches will sublease a portion of the Subject Property as defined herein (the "Sublease Area"), with the consent of Union Pacific. The Consent to Sublease, which will be executed concurrently

between the City, the Grossiches and Union Pacific, is attached hereto as Exhibit "C" and is incorporated herein by reference.

E. Whereas in consideration of the right of possession of, and the use and enjoyment of the Sublease Area during the term of this Sublease Agreement, the Grossiches agree to make a certain Sublease Payment, as defined herein. The Sublease Area is defined as set forth on the map of the Subject Property attached hereto as Exhibit "D."

F. Whereas the City and the Grossiches agree to mutually cooperate now and hereafter, to the extent possible, in order to sustain the intent of this Sublease Agreement and the bargain of both parties hereto.

### **AGREEMENT**

NOW, THEREFORE, for and in consideration of the premises and the covenants hereinafter contained, the City and the Grossiches hereto hereby formally covenant, agree and bind themselves as follows:

### **ARTICLE I**

#### **SUBLEASE OF PROPERTY; TERM; LEASE PAYMENTS; USES; CONSENT TO BE BOUND**

**Section 1.01. Sublease of a Portion of the Subject Property.** The City hereby subleases a portion of the Subject Property, i.e. the Sublease Area, to the Grossiches. The Sublease Area is defined on the map of the Subject Property, attached hereto as Exhibit "D" and incorporated herein by reference. The Sublease Area generally includes that portion of the Subject Property between 10th Street and F Street from the property line between the Grossich Property and the Subject Property, to a line that is seven feet north and west of the edge of the existing hike and bike trail as it runs parallel to Colton Avenue, which line shall divide the Sublease Area from the remainder of the Subject Property.

**Section 1.02. Term.** The term of this Sublease Agreement commences on June 1, 2012, and ends on December 31, 2023. The City and the Grossiches agree that if the City extends the term of its lease with Union Pacific beyond the current December 31, 2023 expiration date, as set forth in the Supplement to Lease Agreement, then the City and the Grossiches will amend this Sublease Agreement and extend the term to correspond to the same extension of the Lease Agreement between the City and Union Pacific, provided that Union Pacific consents to such an extension of the Sublease Agreement. This Sublease Agreement will automatically terminate in the event that the Lease Agreement between the City and Union Pacific terminates for any reason. Subject to **Section 3.03** herein, this Sublease Agreement will terminate if the Grossiches sell, assign, lease or otherwise transfer any portion of their interest in this Sublease Agreement or the Sublease Area to any person or entity.

### **Section 1.03. Sublease Payment.**

(a) ***Sublease Rental Obligations.*** The Grossiches agree to pay the City a one time payment of Four Hundred Two Dollars and Fifty Cents (\$402.50) for their use of the Sublease Area from June 1, 2012 to December 31, 2023 (the "Sublease Payment"). The Grossiches shall pay this amount by way of a check made payable to the City of Colton, and shall deliver the check to the City Manager, Rod Foster, on or before August 30, 2012. This Sublease Payment represents an approximate corresponding per square foot value for the Sublease Area that the City paid to Union Pacific for the entire right-of-way for a 20 year term under the Supplement to Lease Agreement, which value was then prorated to account for the Sublease Agreement term of 11.5 years. If this Sublease Agreement is terminated for any reason other than the Grossiches' default, then the City will reimburse the Grossiches consistent with the same reimbursement calculation as set forth in Article II.B of the Supplement to Lease Agreement. In the event that the term of the Lease Agreement between the City and Union Pacific is extended beyond the current December 31, 2023 expiration date, the City and the Grossiches agree that the Grossiches will pay the same per square foot per year value to the City that the City will pay to Union Pacific under any such extension of the Lease Agreement, and that this Sublease Agreement will be amended to reflect the change in term and Sublease Payment at such time as the Lease Agreement is amended.

(b) ***Additional Payments.*** In the event that Union Pacific ever requests that the City reimburse it for any property taxes or assessments levied on the right-of-way pursuant to Section 4 of Exhibit B of the Lease Agreement, or Article VI, Section 4 of the Supplement to Lease Agreement, the Grossiches agree that they will reimburse the City for the pro rata share of such taxes or assessments based on the ratio of the square footage of the Sublease Area to the square footage of the entire right-of-way. The City and the Grossiches agree to work in good faith to determine an agreed upon ratio, or in the alternative to share in the cost of determining an exact square footage of the right-of-way and the Sublease Area, at such time as the per square foot rental obligation shall change pursuant to **Section 1.03(a)** herein, or in the event that any taxes or assessments shall become due and owing to Union Pacific.

**Section 1.04. Allowable Uses of the Sublease Area.** The Grossiches may only use the Sublease Area for uses allowed under all applicable Federal, State and local laws, including the City's Municipal Code. The Grossiches have used and are currently using a part of the Sublease Area for the storage of automobiles and automobile-related parts and accessories. The City deems the current use to be a legal non-conforming use pursuant to the City's Municipal Code, including Chapter 18.46 (Nonconforming Structures and Uses). For the term of this Sublease Agreement and any extension thereof, the Grossiches may continue the current use of the Sublease Area as a legal non-conforming use, subject to all rules and restrictions as set forth in the Municipal Code, including Chapter 18.46. In addition to any change of use restrictions provided for in the City's Municipal Code, including Chapter 18.46, and their corresponding impact on the legal non-conforming status of the automobile and automobile-related parts and accessories storage, if the Grossiches change the use of the Sublease Area at any time during the term of the Sublease Agreement or any extension of the Sublease Agreement, the Grossiches



must first obtain the consent of the City, which shall not be unreasonably withheld, but which can take into account whether such use is allowed under applicable Federal, State and local laws, including the City's Municipal Code. One factor in determining the City's consent will be the consent of Union Pacific to the proposed changed use. The Grossiches must also comply with Section 7 of Exhibit B of the Lease Agreement and Article VIII, Section 7 of the Supplement to Lease Agreement, and shall not allow for any Hazardous Substances (as defined in the Lease Agreement) to be located or stored upon the Sublease Area, except as otherwise permitted in the Lease Agreement and Supplement to Lease Agreement.

**Section 1.05. Consent to be Bound.** With the exception of the allowable uses for the Sublease Area as set forth in **Section 1.04** herein, the Grossiches hereby agree to bound by all covenants and obligations of the Lease Agreement and Supplement to Lease Agreement as it relates to the Sublease Area, including but not limited to the lessee's obligations of maintenance, insurance, indemnification, storage of Hazardous Substances, and the vacation of the Sublease Area upon termination under said agreements. The Grossiches' consent to be bound is for the benefit of Union Pacific.

## **ARTICLE II**

### **MAINTENANCE; INSURANCE; AND INDEMNITY**

**Section 2.01. Construction of the Sublease Area Barrier.** On or before December 31, 2012, the City will remove the temporary fence that currently exists on the Subject Property at the edge of the hike and bike path landscaping, and will install a barrier that will separate the Sublease Area from the remainder of the Subject Property (the "Sublease Area Barrier"). The Sublease Area Barrier will also enclose the Sublease Area such that the storage of automobiles and automobile-related parts and accessories will be adequately shielded from public view to the satisfaction of the City. The Sublease Area Barrier will consist of an eight foot (8') tall split-face masonry wall, and the City will also install landscaping and irrigation along the Sublease Area Barrier. The Grossiches will reimburse the City a total sum of Five Thousand, Six Hundred Thirty Five dollars (\$5,635) for their share of the construction of the Sublease Area Barrier, or such other amount as may be determined by Paragraph 5 of the Settlement Agreement between the City and the Grossiches.

**Section 2.02. Maintenance of the Sublease Area and Sublease Area Barrier.** Throughout the term of this Sublease Agreement and any extensions thereof, as part of the consideration for the rental of Sublease Area, the Grossiches shall be responsible for the maintenance of the Sublease Area and the side of the Sublease Area Barrier facing the Sublease Area, including maintaining the structural integrity of the soil surrounding the footings for the Sublease Area Barrier, as well as any repair to the Sublease Area or Sublease Area Barrier in any manner arising out of or incident to the acts, omissions or willful misconduct of the Grossiches, or their employees, agents, representatives or invitees, or trespassers on the Sublease Area. The Grossiches shall maintain the Sublease Area and Sublease Area Barrier facing the Sublease Area to a reasonable and standard condition and in compliance with all applicable laws, including the City's Municipal Code, and shall maintain the Sublease Area so that it is free of nuisances, waste, debris, or other hazardous conditions. The City shall be responsible for the maintenance of the Sublease Area Barrier facing the remainder of the Subject Property, including maintaining



the structural integrity of the soil surrounding the footings for the Sublease Area Barrier, as well as any repair to the Sublease Area Barrier in any manner arising out of or incident to the acts, omissions or willful misconduct of the City or their employees, agents or representatives, or third parties.

The Grossiches waive the benefits of subsections 1 and 2 of Section 1932, Section 1933(4) and Sections 1941 and 1942 of the California Civil Code, but such waiver does not limit any of the rights of the Grossiches under the terms of this Sublease Agreement.

**Section 2.03. Insurance Obligations.** Prior to the August 30, 2012, the Grossiches shall procure, and maintain for the duration of this Sublease Agreement and any extensions thereof, a policy of insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Sublease Area and Sublease Area Barrier. The policy of insurance must contain general liability insurance in the amount of One Million dollars (\$1,000,000) per occurrence for bodily injury, including death, personal injury and property damage, and a One Million dollar (\$1,000,000) general aggregate limit, and the policy must otherwise comply with all requirements of Article XIV of the Supplement to Lease Agreement. If the policy includes any deductible or self-insured retention in excess of One Thousand dollars (\$1,000), the parties agree that the City must first approve such deductible or self-insured retention. The general liability policy must contain the following provisions for the benefit of the City and Union Pacific: (i) the Sublease Area and Sublease Area Barrier shall be included in the policy coverage area; (ii) the City and Union Pacific, and their respective officers, officials, employees, agents and volunteers are to be covered as additional insureds with respect to liability arising out of the Grossiches' use and occupancy of the Sublease Area, (iii) the policy shall be one of primary insurance, while any insurance or self-insurance maintained by the City or Union Pacific, and their respective officers, officials, employees, agents and volunteers shall be excess insurance and shall not contribute to the Grossiches' policy, and (iv) the policy shall be endorsed to state that coverage shall not be canceled, except after 30 days' prior written notice by certified mail, return receipt requested, has been given to the City. The Grossiches agrees to procure and maintain at all times a policy of insurance with an insurance company that has a current A.M. Best's rating of no less than B:VII, and that is authorized to transact business in the State of California. The Grossiches further agrees to furnish the City with original certificates and amendatory endorsements effecting coverage required by this Section. All certificates and endorsements must be received and approved by the City.

**Section 2.04. Indemnity Obligations.** The Grossiches shall indemnify, defend and hold the City and Union Pacific, and their respective officials, officers, employees, agents and volunteers free and harmless from any and all liability from loss, damage, or injury (including reasonable attorneys' fees and costs) to any property or persons in any manner arising out of or incident to (i) the entry upon the Sublease Area by the Grossiches, their invitees or any trespasser; (ii) the use and occupancy of the Sublease Area by the Grossiches, their invitees or any trespasser; (iii) any incident involving the Sublease Area Barrier, to the extent caused in whole or in part by the Grossiches' failure to maintain or repair the Sublease Area Barrier as provided for in Section 2.02 above, that results in any personal injury, death or property damage of any kind, and (iv) the failure of the Grossiches to fulfill any of their obligations pursuant to this Sublease Agreement.

## ARTICLE III

### OTHER SUBLEASE PROVISIONS

**Section 3.01. Eminent Domain.** The Grossiches agree to comply with and adhere to Section 19 of Exhibit B to the Lease Agreement regarding any condemnation, or sale in lieu of condemnation, of the Sublease Area.

**Section 3.02. Abatement of Sublease Area in the Event of Damage or Destruction.** In the event that any improvements on the Sublease Area are damaged or destroyed by fire or other casualty, the Grossiches agree to comply with and adhere to Section 6.C of Exhibit B of the Lease Agreement.

**Section 3.03. Assignment by the Grossiches.** The Grossiches may not sell, assign, lease or otherwise transfer any of their rights or obligations under this Sublease Agreement, or any part of the Sublease Area, without the prior approval and written consent of the City, which shall not be unreasonably withheld. The Grossiches also may not sell, assign, lease or otherwise transfer any of their rights or obligations under this Sublease Agreement, or any part of the Sublease Area, unless Union Pacific first consents in writing to such transfer. Any attempt by the Grossiches to sell, assign, lease or otherwise transfer the rights and obligations under this Sublease Agreement or any part of the Sublease Area without first obtaining written consent from the City and Union Pacific shall be deemed an Event of Default, as defined herein.

**Section 3.04. Liens.** The Grossiches agree to comply with Section 9 of Exhibit B to the Lease Agreement regarding liens, and they shall not allow any liens to attach to the Sublease Area for any services, labor or materials furnished to the Sublease Area or otherwise arising from the Grossiches' use of the Sublease Area. The City shall have the right to discharge any such liens at the Grossiches' expense.

**Section 3.05. Amendment of Sublease Agreement.** This Sublease Agreement may not be amended except in writing by the parties hereto. Amendments to this Sublease Agreement will not be valid unless they are first approved in writing by Union Pacific

**Section 3.06. Notices.** During the Term of this Sublease Agreement and any extensions thereof, the City shall provide written notice to the Grossiches of any Event of Default, as defined herein, or any material changes to the Lease Agreement or Supplement to Lease Agreement between the City and Union Pacific, by mailing such notices via certified mail to the following address: 320 East F. Street, Colton, CA 92324; Attention Ernest and/or Gary Grossich. The Grossiches shall provide written notice to the City of any required notification under this Sublease Agreement by mailing such notice via certified mail to the City at the following address: 650 North La Cadena Drive, Colton, CA 92324; Attention City Manager.

**Section 3.07. Disclaimer of Warranties – As Is.** The Grossiches accept the Sublease Area in its present condition with all faults, whether patent or latent, and without warranties or covenants, express or implied. The Grossiches acknowledge that the City shall have no duty to maintain, repair or improve the Sublease Area.

## ARTICLE IV

### EVENTS OF DEFAULT AND REMEDIES

**Section 4.01. Events of Default Defined.** Any one or more of the following events constitutes an Event of Default hereunder:

- (a) Failure by the Grossiches to pay any Lease Payment or other payment required to be paid hereunder at the time specified herein.
- (b) Failure by the Grossiches to observe and/or perform any covenant, condition or agreement on its part to be observed or performed hereunder, other than as referred to in this Sublease Agreement, for a period of 14 days after written notice specifying such failure and requesting that it be remedied has been given to the Grossiches by the City.
- (c) Failure by the Grossiches to obtain the City's and Union Pacific's written consent prior to assigning, leasing, selling or otherwise transferring its interests and obligations under this Sublease Agreement or to the Sublease Area.
- (d) Using the Sublease Area for a use that is not otherwise permitted under **Section 1.04** of this Sublease Agreement.
- (e) Failure by the Grossiches to maintain the Sublease Area and/or Sublease Barrier to the standards set forth in **Section 2.02** of this Sublease Agreement.
- (f) Failure by the Grossiches to obtain or maintain at all times the required levels of insurance as set forth in **Section 2.03** of this Sublease Agreement.

**Section 4.02. Default, Notice and Opportunity to Cure.** If either party breaches this Sublease Agreement or otherwise commits an Event of Default, then the party believed to have breached or committed an Event of Default shall have the opportunity to cure the specified breach or default. However, this opportunity to cure shall only be afforded one time in any one year period for any breach or default of any one specified provision, and if either party commits the same breach or default of any provision of this Sublease Agreement more than one time in any one year period, that party shall not have an opportunity to cure for the second breach or default. In the event of any breach or default where the opportunity to cure has not previously been exhausted, the non-breaching or defaulting party shall give written notice to the breaching or defaulting party in accordance with **Section 3.06**, and the breaching or defaulting party shall then have 14 days to cure any such breach or default. The non-breaching party may not pursue any enforcement action if the breaching or defaulting party fully complies and cures the breach or default within the 14-day period.

**Section 4.03. Remedies on Default.** Whenever any Event of Default has happened and is continuing, and has not otherwise been cured in accordance with **Section 4.02**, the City may exercise any and all remedies available under law or granted under this Sublease Agreement. Each and every covenant hereof to be kept and performed by the Grossiches is expressly made a



condition and upon the breach thereof the City may exercise any and all rights available at law or granted hereunder.

**Section 4.04. Agreement to Pay Attorneys' Fees and Expenses.** Should any party to this Sublease Agreement reasonably retain counsel for the purpose of enforcing or preventing the breach or default of any provision of this Sublease Agreement, including but not limited to, instituting or defending any action or proceeding to enforce any provision of this Sublease Agreement, for damages by reason of any alleged breach or any provision hereof, for declaration of such parties' rights or obligations hereunder, for an eviction from the Sublease Area, or for any other judicial remedy, then, if said matter is settled by arbitration or judicial determination, the prevailing party shall be entitled to be reimbursed by the losing party for all costs and expenses incurred thereby, including, but not limited to, reasonable attorneys' fees and costs.

## **ARTICLE V**

### **MISCELLANEOUS PROVISIONS**

**Section 5.01. Binding Effect.** This Sublease Agreement inures to the benefit of and is binding upon the Grossiches and the City.

**Section 5.02. Severability.** If any provision of this Sublease Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision hereof.

**Section 5.03. Execution in Counterparts.** This Sublease Agreement may be executed in several counterparts, each of which is an original and all of which constitutes one and the same instrument.

**Section 5.04. Applicable Law.** This Sublease Agreement is governed by and construed in accordance with the laws of the State.


**Section 5.05. Captions.** The captions or headings in this Sublease Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or section of this Sublease Agreement.

IN WITNESS WHEREOF, the Grossiches and the City have caused this Sublease Agreement to be executed in their respective names by their duly authorized officers, all as of the date first above written.


[Signatures on the Following Page]

**SIGNATURE PAGE FOR SUBLEASE AGREEMENT BY AND BETWEEN CITY OF  
COLTON, CALIFORNIA, AS SUBLESSOR AND ERNEST GROSSICH,  
INDIVIDUALLY AND AS TRUSTEE OF THE GROSSICH FAMILY TRUST, AND  
GARY GROSSICH, AS SUBLESSEE [DATED AS OF JUNE 1, 2012]**

Dated: August 20, 2012

  
ERNEST GROSSICH, Individually and as  
Trustee of the ERNEST GROSSICH FAMILY  
TRUST

Dated: August 30, 2012

  
GARY GROSSICH, an individual

Dated: August \_\_, 2012

CITY OF COLTON

By: SARAH S. ZAMORA, Mayor

Attest:

By: EILEEN C. GOMEZ, City Clerk



## LEASE OF PROPERTY

THIS LEASE ("Lease") is entered into on the 11 day of September, 2000, between **UNION PACIFIC RAILROAD COMPANY** ("Lessor") and **CITY OF COLTON**, whose address is 650 N.G. 1st Avenue Dr., Colton, California 92324 ("Lessee").

### IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS:

#### Article I. PREMISES USE

Lessor leases to Lessee and Lessee leases from Lessor the premises ("Premises") at Colton, California, as shown on the print marked Exhibit "A" hereto attached and made a part hereof, subject to the provisions of this Lease and of Exhibit B attached hereto and made a part hereof. The Premises are to be used for beautification and weed control and for no other purpose.

#### Article II. TERM

The term of this Lease shall commence on September 1, 2000, and unless sooner terminated as provided in this Lease, shall extend for one year, and thereafter, shall automatically be extended from year to year.

#### Article III. RENT

A. Lessee shall pay to Lessor, in advance, rent of One Dollar (\$1.00) annually.

IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year first herein written.

UNION PACIFIC RAILROAD COMPANY

CITY OF COLTON

By: [Signature]

Manager - Real Estate

By: [Signature]

Title: City Manager

NOTE:

**CODED**  
D.E.A.

By:

Date:

SEP 28 2000



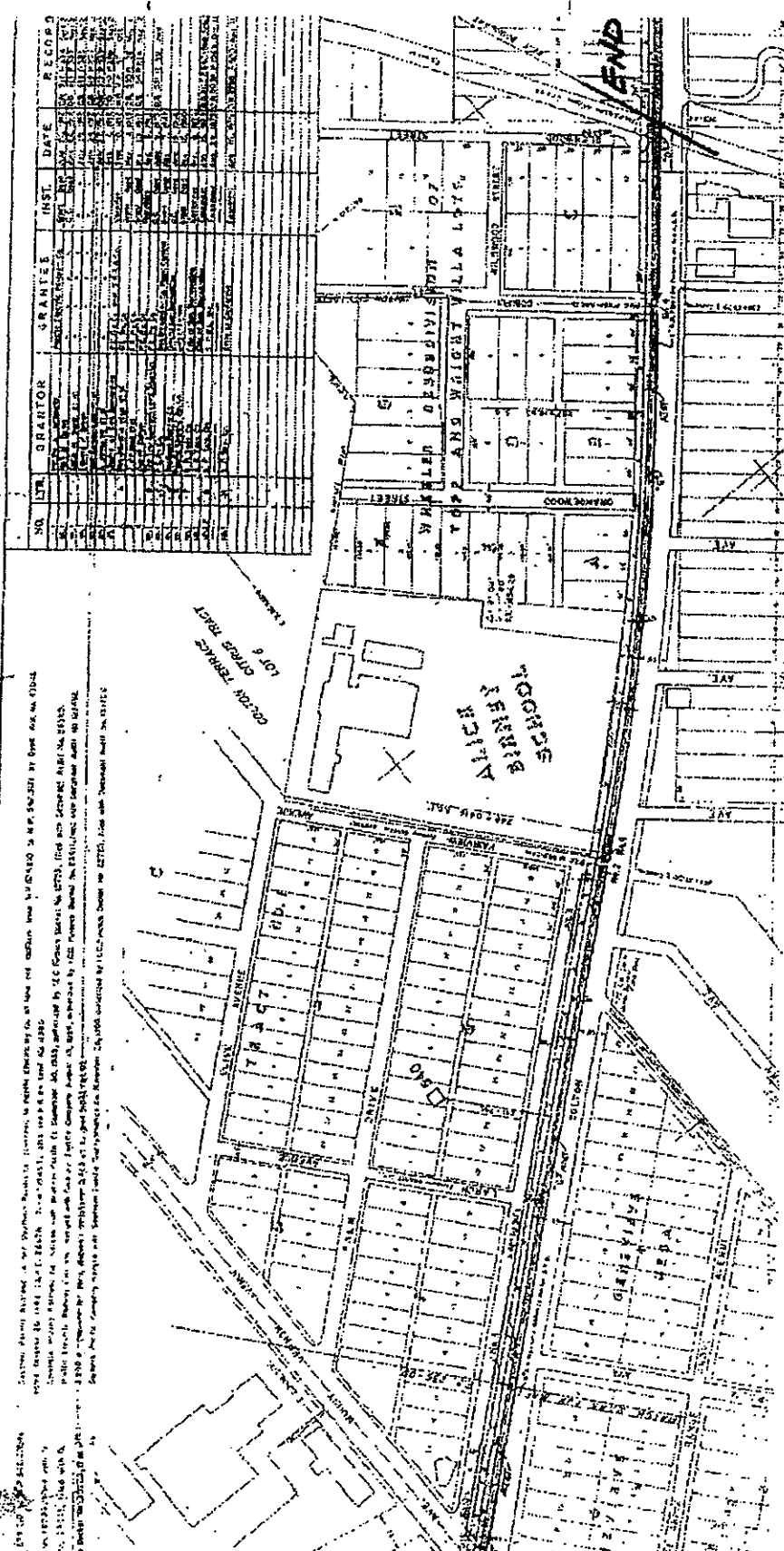


EXHIBIT A

SCHEDULE OF PROPERTY					REMARKS
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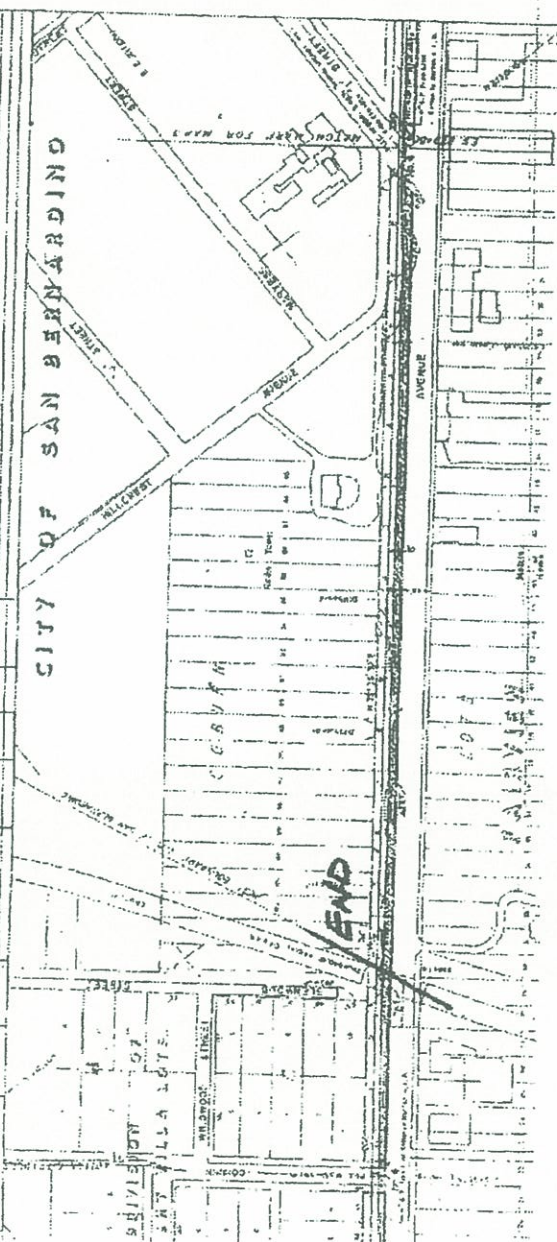


EXHIBIT A

No improvements placed upon the Premises by Lessee shall become a part of the realty.

A. Lessor reserves to itself, its agents and contractors, the right to enter the Premises at such times as will not unreasonably interfere with Lessee's use of the Premises.

C. This Lease is made subject to all outstanding rights, whether or not of record. Lessor reserves the right to renew such outstanding rights.

Rent (which includes the annual rent and all other amounts to be paid by Lessee under this Lease) shall be paid in lawful money of the United States of America, at such place as shall be designated by the Lessor, and without offset or deduction.

A. Lessee shall pay, prior to delinquency, all taxes levied during the life of this Lease on all personal property and improvements on the Premises not belonging to Lessor. If such taxes are paid by Lessor, either separately or as a part of the levy on Lessor's real property, Lessee shall reimburse Lessor in full within thirty (30) days after rendition of Lessor's bill.

Section 5. WATER RIGHTS.

Section 6. CARE AND USE OF PREMISES.

**B. Lessee shall not permit any sign on the Premises, except signs relating to Lessee's business.**



C. If any improvement on the Premises not belonging to Lessor is damaged or destroyed by fire or other casualty, Lessee shall, within thirty (30) days after such casualty, remove all debris resulting therefrom. If Lessee fails to do so, Lessor may remove such debris, and Lessee agrees to reimburse Lessor for all expenses incurred within thirty (30) days after rendition of Lessor's bill.

D. Lessee shall comply with all governmental laws, ordinances, rules, regulations and orders relating to Lessee's use of the Premises.

Section 7. HAZARDOUS MATERIALS, SUBSTANCES AND WASTES.

A. Without the prior written consent of Lessor, Lessee shall not use or permit the use of the Premises for the generation, use, treatment, manufacture, production, storage or recycling of any Hazardous Substances, except that Lessee may use (i) small quantities of common chemicals such as adhesives, lubricants and cleaning fluids in order to conduct business at the Premises and (ii) other Hazardous Substances, other than hazardous wastes as defined in the Resource Conservation and Recovery Act, 42 U.S.C. §§ 9601, et seq., as amended ("RCRA"), that are necessary for the conduct of Lessee's business at the Premises as specified in Article I. The consent of Lessor may be withheld by Lessor for any reason whatsoever, and may be subject to conditions in addition to those set forth below. It shall be the sole responsibility of Lessee to determine whether or not a contemplated use of the Premises is a Hazardous Substance use.

B. In no event shall Lessee (i) release, discharge or dispose of any Hazardous Substances; (ii) bring any hazardous wastes as defined in RCRA onto the Premises; (iii) install or use on the Premises any underground storage tanks; or (iv) store any Hazardous Substances within one hundred feet (100') of the center line of any main track.

C. If Lessee uses or permits the use of the Premises for a Hazardous Substance use, with or without Lessor's consent, Lessee shall furnish to Lessor copies of all permits, identification numbers and notices issued by governmental agencies in connection with such Hazardous Substance use, together with such other information on the Hazardous Substance use as may be requested by Lessor. If requested by Lessor, Lessee shall cause to be performed an environmental assessment of the Premises upon termination of the Lease and shall furnish Lessor a copy of such report, at Lessee's sole cost and expense.

D. Without limitation of the provisions of Section 12 of this Exhibit B, Lessee shall be responsible for all damages, losses, costs, expenses, claims, fines and penalties related in any manner to any Hazardous Substance use of the Premises (or any property in proximity to the Premises) during the term of this Lease or, if longer, during Lessee's occupancy of the Premises, regardless of Lessor's consent to such use, or any negligence, misconduct or strict liability of any Indemnified Party (as defined in Section 12); and including, without limitation, (i) any diminution in the value of the Premises and/or any adjacent property of any of the Indemnified Parties, and (ii) the cost and expense of clean-up, restoration, containment, remediation, decontamination, removal, investigation, monitoring, closure or post-closure. Notwithstanding the foregoing, Lessee shall not be responsible for Hazardous Substances (i) existing on, in or under the Premises prior to the earlier to occur of the commencement of the term of the Lease or Lessee's taking occupancy of the Premises, or (ii) migrating from adjacent property not controlled by Lessee, or (iii) placed on, in or under the Premises by any of the Indemnified Parties; except where the Hazardous Substance is discovered by, or the contamination is exacerbated by, any excavation or investigation undertaken by or at the behest of Lessee. Lessee shall have the burden of proving by a preponderance of the evidence that any exceptions of the foregoing to Lessee's responsibility for Hazardous Substances applies.

E. In addition to the other rights and remedies of Lessor under this Lease or as may be provided by law, if Lessor reasonably determines that the Premises may have been used during the term of this Lease or any prior lease with Lessee for all or any portion of the Premises, or are being used for any Hazardous Substance use, with or without Lessor's consent thereto, and that a release or other contamination may have occurred, Lessor may, at its election and at any time during the life of this Lease or thereafter (i) cause the

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Premises and/or any adjacent premises of Lessor to be tested, investigated, or monitored for the presence of any Hazardous Substance, (ii) cause any Hazardous Substance to be removed from the Premises and any adjacent lands of Lessor, (iii) cause to be performed any restoration of the Premises and any adjacent lands of Lessor, and (iv) cause to be performed any remediation of, or response to, the environmental condition of the Premises and the adjacent lands of Lessor, as Landlord reasonably may deem necessary or desirable, and the cost and expense thereof shall be reimbursed by Lessee to Lessor within thirty (30) days after rendition of Lessor's bill. In addition, Lessor may, at its election, require Lessee, at Lessee's sole cost and expense, to perform such work, in which event, Lessee shall promptly commence to perform and thereafter diligently prosecute to completion such work, using one or more contractors and a supervising consulting engineer approved in advance by Lessor.

F. For purposes of this Section 7, the term "Hazardous Substance" shall mean (i) those substances included within the definitions of "hazardous substance", "pollutant", "contaminant", or "hazardous waste" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601, et seq., as amended or in RCRA, the regulations promulgated pursuant to either such Act, or state laws and regulations similar to or promulgated pursuant to either such Act, (ii) any material, waste or substance which is (A) petroleum, (B) asbestos, (C) flammable or explosive, or (D) radioactive; and (iii) such other substances, materials and wastes which are or become regulated or classified as hazardous or toxic under federal, state or local law.

Section 8. UTILITIES.

A. Lessee will arrange and pay for all utilities and services supplied to the Premises or to Lessee.

B. All utilities and services will be separately metered to Lessee. If not separately metered, Lessee shall pay its proportionate share as reasonably determined by Lessor.

Section 9. LIENS.

Lessee shall not allow any liens to attach to the Premises for any services, labor or materials furnished to the Premises or otherwise arising from Lessee's use of the Premises. Lessor shall have the right to discharge any such liens at Lessee's expense.

Section 10. ALTERATIONS AND IMPROVEMENTS; CLEARANCES.

A. No alterations, improvements or installations may be made on the Premises without the prior consent of Lessor. Such consent, if given, shall be subject to the needs and requirements of the Lessor in the operation of its Railroad and to such other conditions as Lessor determines to impose. In all events such consent shall be conditioned upon strict conformance with all applicable governmental requirements and Lessor's then-current clearance standards.

B. All alterations, improvements or installations shall be at Lessee's sole cost and expense.

C. Lessee shall comply with Lessor's then-current clearance standards, except (i) where to do so would cause Lessee to violate an applicable governmental requirement, or (ii) for any improvement or device in place prior to Lessee taking possession of the Premises if such improvement or device complied with Lessor's clearance standards at the time of its installation.

D. Any actual or implied knowledge of Lessor of a violation of the clearance requirements of this Lease or of any governmental requirements shall not relieve Lessee of the obligation to comply with such requirements, nor shall any consent of Lessor be deemed to be a representation of such compliance.



Section 11. AS-IS.

Lessee accepts the Premises in its present condition with all faults, whether patent or latent, and without warranties or covenants, express or implied. Lessee acknowledges that Lessor shall have no duty to maintain, repair or improve the Premises.

Section 12. RELEASE AND INDEMNITY.

A. As a material part of the consideration for this Lease, Lessee, to the extent it may lawfully do so, waives and releases any and all claims against Lessor for, and agrees to indemnify, defend and hold harmless Lessor, its affiliates and its and their officers, agents and employees ("Indemnified Parties") from and against, any loss, damage (including, without limitation, punitive or consequential damages), injury, liability, claim, demand, cost or expense (including, without limitation, attorneys' fees and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, Lessor, Lessee, or any employee of Lessor or Lessee) and arising from or related to (i) any use of the Premises by Lessee or any invitee or licensee of Lessee, (ii) any act or omission of Lessee, its officers, agents, employees, licensees or invitees, or (iii) any breach of this Lease by Lessee.

B. The foregoing release and indemnity shall apply regardless of any negligence, misconduct or strict liability of any Indemnified Party, except that the indemnity, only, shall not apply to any Loss caused by the sole, active and direct negligence of any Indemnified Party if the Loss (i) was not occasioned by fire or other casualty, or (ii) was not occasioned by water, including, without limitation, water damage due to the position, location, construction or condition of any structures or other improvements or facilities of any Indemnified Party.

C. Where applicable to the Loss, the liability provisions of any contract between Lessor and Lessee covering the carriage of shipments or baggage serving the Premises shall govern the Loss and shall supersede the provisions of this Section 12.

D. No provision of this Lease with respect to insurance shall limit the extent of the release and indemnity provisions of this Section 12.

Section 13. TERMINATION.

A. Lessor may terminate this Lease by giving Lessee notice of termination, if Lessee (i) fails to pay rent within fifteen (15) days after the due date, or (ii) defaults under any other obligation of Lessee under this Lease and, after written notice is given by Lessor to Lessee specifying the default, Lessee fails either to immediately commence to cure the default, or to complete the cure expeditiously but in all events within thirty (30) days after the default notice is given.

B. Notwithstanding the term of this Lease set forth in Article II, Lessor or Lessee may terminate this Lease without cause upon thirty (30) days' notice to the other party; provided, however, that at Lessor's election, no such termination by Lessee shall be effective unless and until Lessee has vacated and restored the Premises as required in Section 15A), at which time Lessor shall refund to Lessee, on a pro rata basis, any unearned rental paid in advance.

Section 14. LESSOR'S REMEDIES.

Lessor's remedies for Lessee's default are to (a) enter and take possession of the Premises, without terminating this Lease, and relet the Premises on behalf of Lessee, collect and receive the rent from reletting, and charge Lessee for the cost of reletting, and/or (b) terminate this Lease as provided in Section 13 A) above and sue Lessee for damages, and/or (c) exercise such other remedies as Lessor may have at law or in equity. Lessor may enter and take possession of the Premises by self-help, by changing locks, if necessary, and may lock out Lessee, all without being liable for damages.

**Section 15. VACATION OF PREMISES; REMOVAL OF LESSEE'S PROPERTY.**

A. Upon termination hereafter of this Lease, Lessee (I) shall have peaceably and quietly vacated and surrendered possession of the Premises to Lessor, without Lessor giving any notice to quit or demand for possession, and (I) shall have removed from the Premises all structures, property and other materials not belonging to Lessor, and restored the surface of the ground to as good a condition as the same was in before such structures were erected, including, without limitation, the removal of foundations, the filling in of excavations and pits, and the removal of debris and rubbish.

B. If Lessee has not completed such removal and restoration within thirty (30) days after termination of this Lease, Lessor may, at its election, and at any time or times, (I) perform the work and Lessee shall reimburse Lessor for the cost thereof within thirty (30) days after bill is rendered, (I) take title to all or any portion of such structures or property by giving notice of such election to Lessee, and/or (II) lease Lessee as a holdover tenant at will until such removal and restoration is completed.

**Section 16. FIBER OPTICS**

Lessee shall telephone Lessor during normal business hours (7:00 a.m. to 5:00 p.m., Central Time, Monday through Fridays, except for holidays) at 1-800-338-5193 (also a 24-hour 7-day number for emergency calls) to determine if fiber optic cable is buried on the Premises. If cable is buried on the Premises, Lessee will telephone the telecommunications company(ies) arrange for cable location, and make arrangements for relocation or other protection of the cable. Notwithstanding compliance by Lessee with this Section 16, the release and indemnity provisions of Section 12 above shall apply fully to any damage or destruction of any telecommunications system.

**Section 17. NOTICES**

Any notice, consent or approval to be given under this Lease shall be in writing, and personally served, sent by reputable courier service, or sent by certified mail, postage prepaid, return receipt requested, to Lessor at: Union Pacific Railroad Company, Attn: Assistant Vice President - Real Estate, Real Estate Department, 1800 Farnam Street, Omaha, Nebraska 68102; and to Lessee at the above address, or at such other address as a party may designate in notice given to the other party. Mailed notices shall be deemed served five (5) days after deposit in the U.S. Mail. Notices which are personally served or sent by courier service shall be deemed served upon receipt.

**Section 18. ASSIGNMENT**

A. Lessee shall not sublease the Premises, in whole or in part, or assign, encumber or transfer (by operation of law or otherwise) this Lease, without the prior consent of Lessor, which consent may be denied at Lessor's sole and absolute discretion. Any purported transfer or assignment without Lessor's consent shall be void and shall be a default by Lessee.

B. Subject to this Section 18, this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

**Section 19. CONDEMNATION**

If, as reasonably determined by Lessor, the Premises cannot be used by Lessee because of a condemnation or sale in lieu of condemnation, then this Lease shall automatically terminate. Lessor shall be entitled to the entire award or proceeds for any total or partial condemnation or sale in lieu thereof, including, without limitation, any award or proceeds for the value of the leasehold estate created by this Lease. Notwithstanding the foregoing, Lessee shall have the right to pursue recovery from the condemning authority of such compensation as may be separately awarded to Lessee for Lessee's relocation expenses, the taking of Lessee's personal property and fixtures, and the interruption of or damage to Lessee's business.

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APPROVED, LAW

Section 20. ATTORNEY'S FEES.

If either party retains an attorney to enforce this Lease (including, without limitation, the indemnity provisions of this Lease), the prevailing party is entitled to recover reasonable attorney's fees.

Section 21. ENTIRE AGREEMENT.

This Lease is the entire agreement between the parties, and supersedes all other oral or written agreements between the parties pertaining to this transaction. Except for the unilateral redetermination of annual rent as provided in Article III., this Lease may be amended only by a written instrument signed by Lessor and Lessee.



## SUPPLEMENT TO LEASE AGREEMENT

THIS SUPPLEMENT ("Supplement") is made and entered into on this 14<sup>th</sup> day of April, 2004, between UNION PACIFIC RAILROAD COMPANY ("Lessor") and CITY OF COLTON, a California municipal corporation, whose address is 650 No. La Cadena Dr., Colton, California 92324 ("Lessee").

### RECITALS:

By instrument dated September 11, 2000, identified as Audit No. 217453 (collectively "Lease"), Lessor, or its predecessor in interest, leased to Lessee, or its predecessors in interest, certain premises at Colton, California.

Lessor and Lessee now wish to amend the Lease as provided in this Supplement.

### AGREEMENT:

NOW, THEREFORE, it is agreed between Lessor and Lessee as follows:

#### Article I. TERM

The term of the Lease is hereby extended for twenty (20) years beginning on January 1, 2004, and expiring on December 31, 2023, unless sooner terminated as provided in the Lease.

#### Article II. RENT

A. Lessee shall pay to Lessor advance fixed rent of Twenty Thousand Dollars (\$20,000.00) for the extended term of 20 years referred to in Section 1 above.

B. If Lessor terminates the Lease for any reason other than Lessee's default, or if the Lease is terminated under Section 19 of Exhibit B to the Lease, then Lessor shall refund to Lessee the unearned fixed rent paid in advance for the extended term. The refund shall be calculated on a pro rata basis using a 360-day year. (For example, if the extended term is for 20 years and, if this Lease is cancelled by the Lessor at the end of 10 years, the refund is then 50% of the advanced payment.)

#### Article III. AMENDMENT OF ARTICLE I OF THE LEASE

Effective January 1, 2004, the last sentence of Article I of the Lease is amended to read as follows: "The Premises may be used for a hike and bike trail, beautification and purposes incidental thereto, only, and for no other purpose."

Article IV. Section 2 (B) of Exhibit B to the Lease is hereby amended in its entirety to read as follows:

- B. Lessor reserves (i) the exclusive right to permit third party placement of advertising signs on the Premises, and (ii) the right to construct, maintain and operate new and existing facilities (including, without limitation, trackage, fences,

communication facilities, public and private roadways, pipelines and utilities) upon, over, across or under the Premises, and to grant to others such rights, provided that Lessee's use of the Premises is not interfered with unreasonably.

Article V.

Section 3 of Exhibit B to the Lease is hereby amended in its entirety to read as follows:

Section 3. PAYMENT OF RENT

Rent (which includes the fixed advance rent and all other amounts to be paid by Lessee under this Lease) shall be paid in lawful money of the United States of America, at such place as shall be designated by the Lessor, and without offset or deduction.

Article VI.

Section 4 of Exhibit B to the Lease is hereby amended in its entirety to read as follows:

Section 4. TAXES AND ASSESSMENTS.

Lessee shall pay, prior to delinquency, all Property Taxes on the Premises and on all personal property and improvements on the Premises. Lessee shall reimburse Lessor within thirty (30) days of rendition of Lessor's bill for any Property Taxes paid by Lessor, whether paid separately, as a part of the levy on other real property of Lessor, or as a part of the central or unit assessment of Lessor's property. For purposes of this Lease, "Property Taxes" means all governmental charges and levies (including, without limitation, real estate and personal property taxes, special assessments and other charges for public improvements or services, and impact fees, but not including income taxes) as may during the term of this Lease be levied upon, assessed against or imposed upon, or become due and payable with respect to, the Premises or the rents payable under this Lease.

Article VII.

Sections 6C. and 6D. of Exhibit B to the Lease are hereby amended in their entirety to read as follows:

Section 6. CARE AND USE OF PREMISES.

C. If any improvement on the Premises is damaged or destroyed by fire or other casualty, Lessee shall, within thirty (30) days after such casualty, remove all debris resulting therefrom. If Lessee fails to do so, Lessor may remove such debris, and Lessee agrees to reimburse Lessor for all expenses incurred within thirty (30) days after rendition of Lessor's bill.

D. Lessee shall comply with all governmental laws, ordinances, rules, regulations and orders relating to Lessee's use of the Premises and this Lease, including, without limitation, any requirements for subdividing or platting the Premises.

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Article VIII.

Section 7A. of Exhibit B to the Lease is hereby amended in its entirety to read as follows:

Section 7. HAZARDOUS MATERIALS, SUBSTANCES AND WASTES.

A. Without the prior written consent of Lessor, Lessee shall not use or permit the use of the Premises for the generation, use, treatment, manufacture, production, storage or recycling of any Hazardous Substances, except that Lessee may use, if lawful, small quantities of common chemicals such as adhesives, lubricants and cleaning fluids in order to conduct business at the Premises. The consent of Lessor may be withheld by Lessor for any reason whatsoever, and may be subject to conditions in addition to those set forth below. It shall be the sole responsibility of Lessee to determine whether or not a contemplated use of the Premises is a Hazardous Substance use.

Article IX.

Sections 12A. and 12B. of Exhibit B to the Lease are hereby amended in their entirety to read as follows:

Section 12. RELEASE AND INDEMNITY.

A. As a material part of the consideration for this Lease, Lessee, to the extent it may lawfully do so, waives and releases any and all claims against Lessor for, and agrees to indemnify, defend and hold harmless Lessor, its affiliates, and its and their officers, agents and employees ("Indemnified Parties") from and against, any loss, damage (including, without limitation, punitive or consequential damages), injury, liability, claim, demand, cost or expense (including, without limitation, attorneys' fees and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, Lessor, Lessee, or any employee of Lessor or Lessee) (i) for personal injury or property damage caused to any person while on or about the Premises, or (ii) arising from or related to any use of the Premises by Lessee or any invitee or licensee of Lessee, any act or omission of Lessee, its officers, agents, employees, licensees or invitees, or any breach of this Lease by Lessee.

B. The foregoing release and indemnity shall apply regardless of any negligence, misconduct or strict liability of any Indemnified Party, except that the indemnity, only, shall not apply to any Loss determined by final order of a court of competent jurisdiction to have been caused by the sole active direct negligence of any Indemnified Party.

Article X.

Section 13 of Exhibit B to the Lease is hereby amended in its entirety to read as follows:

Section 13. TERMINATION.

A. Lessor may terminate this Lease for Lessee's default by giving Lessee notice of termination, if Lessee (i) defaults under any obligation of Lessee under this Lease and, after written notice is given by Lessor to Lessee specifying the default, Lessee fails either to immediately commence to cure the default, or to complete the cure expeditiously but in all events

within thirty (30) days after the default notice is given, or (ii) Lessee abandons the Premises for a period of one hundred twenty (120) consecutive days.

- B. Lessee acknowledges that Lessor's possible future needs for the Premises in connection with Lessor's transportation operations are paramount. Accordingly, if at any time Lessor, in its sole and absolute discretion, determines that the Premises or any portion thereof are necessary or desirable for use in connection with Lessor's transportation operations, or that Lessee's use of the Premises should be terminated due to safety considerations associated with Lessor's transportation operations, Lessor may terminate this Lease upon thirty (30) days notice to Lessee or, in emergency situations, upon such shorter notice as is reasonable in the circumstances.
- C. If Lessor shall receive a bona fide offer from a prospective buyer to purchase the Premises and Lessor desires to accept such offer, Lessor shall furnish Lessee with a copy of the proposed contract and notify Lessee of the intention of Lessor to accept the same. Lessee shall have the right to elect to accept such contract by giving Lessor written notice thereof within fifteen (15) days after receipt by Lessee of such contract, and by delivering to Lessor at the same time the full amount of any earnest money specified in such contract. If Lessee shall not so elect within such fifteen (15) day time period, the provisions of this Section 13 (C) shall terminate and be without any further force and effect, and Lessor may enter into such contract with the third party, except that if the transaction with the third party is not consummated according to the terms of such contract, then the provisions of this Section 13 (C) shall be reinstated. Lessor may terminate this lease upon ninety (90) days notice to Lessee if the Premises is subsequently sold to a third party.
- D. After payment of the advance fixed rent to Lessor, Lessee may terminate this Lease without cause upon thirty (30) days notice to Lessor.

#### Article XI.

Section 16 of Exhibit B to the Lease is hereby amended in its entirety to read as follows:

Section 16. FIBER OPTICS.

Lessee shall telephone Lessor during normal business hours (7:00 a.m. to 9:00 p.m., Central Time, Monday through Fridays, except for holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried on the Premises. Lessor may change the telephone number and hours of operation by giving Lessee notice of the change. If cable is buried on the Premises, Lessee will telephone the telecommunications company(ies), arrange for a cable locator, and make arrangements for relocation or other protection of the cable. Notwithstanding compliance by Lessee with this Section 16, the release and indemnity provisions of Section 12 above shall apply fully to any damage or destruction of any telecommunications system.



**Article XII.**

Section 18A. of Exhibit B to the Lease is hereby amended in its entirety to read as follows:

Section 18. ASSIGNMENT.

A. Lessee may sublease the Premises or assign this Lease, by operation of law or otherwise, only if Lessee provides Lessor with advance notice of the assignment or sublease and the sublessee's or assignee's written agreement for the benefit of Lessor to be bound by the terms of this Lease. No subletting or assignment shall relieve Lessee of its obligations under this Lease. Any assignment or sublease by Lessee in violation of this Paragraph A shall be void and ineffective and shall, at the option of Lessor, result in an immediate termination of this Lease.

**Article XIII.**

Section 21 of Exhibit B to the Lease is hereby amended in its entirety to read as follows:

Section 21. RIGHTS AND OBLIGATIONS OF LESSOR.

If any of the rights and obligations of Lessor under this Lease are substantially and negatively affected by any changes in the laws applicable to this Lease, whether statutory, regulatory or under federal or state judicial precedent, then Lessor may require Lessee to enter into an amendment to this Lease to eliminate the negative effect on Lessor's rights and obligations to the extent reasonably possible.

**Article XIV. SPECIAL PROVISION -- INSURANCE**

A. At all times during the term of this Lease, Lessee shall, at Lessee's sole cost and expense, procure and maintain the following insurance coverage:

General Public Liability providing bodily injury, including death, personal injury and property damage coverage with combined single limit of at least One Million Dollars (\$1,000,000.00) per occurrence and a general aggregate limit of at least One Million Dollars (\$1,000,000.00). This insurance shall provide Broad Form Contractual Liability covering the indemnity provisions contained in this Agreement, severability of interests, and name Lessor as an additional insured. If coverage is purchased on a 'claims-made' basis, it shall provide for at least a three (3) year extended reporting or discovery period, which shall be invoked if insurance covering the time period of this Agreement is canceled.

B. Lessee shall furnish Lessor with certificate(s) of insurance, identifying Folder No. 1915-59, evidencing the required coverage and, upon request, a certified duplicate original of the policy. The insurance company issuing the policy shall notify Lessor, in writing, of any material alteration including any change in the retroactive date in any 'claims-made' policies or substantial reduction of aggregate limits, or cancellation at least thirty (30) days prior thereto. The insurance policy shall be written by a



reputable insurance company or companies acceptable to Lessor or with a current Best's Insurance Guide Rating of B and Class VII or better, and which is authorized to transact business in the state where the Premises are located.

C. Lessee hereby waives its right of subrogation under the above insurance policy against Lessor for payment made to or on behalf of employees of Lessee or its agents or for loss of its owned or leased property or property under its care, custody and control while on or near the Premises or any other property of Lessor. Lessee's insurance shall be primary with respect to any insurance carried by Lessor.

**Article XV.**

The following is added as Section 22 of Exhibit B to the Lease:

**Section 22. ENTIRE AGREEMENT.**

This Lease is the entire agreement between the parties, and supersedes all other oral or written agreements between the parties pertaining to this transaction. This Lease may be amended only by a written instrument signed by Lessor and Lessee.

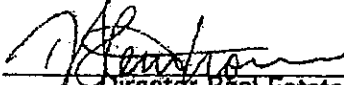
**Article XVI.**

This Supplement is supplemental to the Lease and nothing herein contained shall be construed as amending or modifying the Lease, except as herein specifically provided.

IN WITNESS WHEREOF, Lessor and Lessee have duly executed this Supplemental Agreement as of the date first herein written.

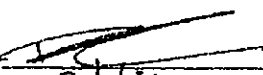
Lessor:

UNION PACIFIC RAILROAD COMPANY

By:   
Title: Director-Real Estate

Lessee:

CITY OF COLTON

By:   
Title: City Manager

Audit: 217453

Folder: 01915-59

## CONSENT TO SUBLEASE

THIS AGREEMENT is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between UNION PACIFIC RAILROAD COMPANY (hereinafter the "Lessor") and CITY OF COLTON, a California municipal corporation, to be addressed at 650 No. La Cadena Dr., Colton, California 92324 (hereinafter the "Lessee") and ERNEST GROSSICH & GARY GROSSICH, to be addressed at 320 East F Street, Colton, California 92324 (hereinafter the "Sublessee").

### RECITALS:

1. By lease dated September 11, 2000, identified in the records of the Lessor as Agreement Audit No. 217453 (hereinafter the "Basic Lease"), the Lessor is leasing to the Lessee certain premises of the Lessor at Colton, California, as shown on a plat attached to the Basic Lease being used by the Lessee for the purposes described in the Basic Lease.
2. On or about May 4, 2007, the Lessee commenced a lawsuit against the Sublessee in California Superior Court, County of San Bernardino, Central District, entitled *City of Colton v. Grossich*, Case No. CIVSS 701112 ("the Civil Action"). Through the Civil Action, the Lessee challenged encroachments made by the Sublessee onto real property held in fee simple by the Lessor, but leased to the Lessee pursuant to the Basic Lease. Specifically, the Lessee sought to establish its superior right to real property identified as the 15,132 square-foot parcel, located in a triangle-shaped block within the City of Colton that is surrounded by East F Street, 10th Street and Colton Avenue, and is identified on the Assessor's Parcel Map (Attached as Exhibit A) as APN 0162-105-05-0000 ("the Subject Property").
3. The Lessor was eventually added as a defendant in the Civil Action via the Sublessee's First Amended Cross-Complaint, filed on or about June 15, 2009.
4. Judgment was entered in the Civil Action on or about December 20, 2010, finding in favor of Lessor and Lessee, and against Sublessee. Sublessee filed Notice of Appeal.
5. In order to avoid the further expense of appellate litigation, the parties to the Civil Action now seek to resolve all differences between them by entering into a sublease involving a portion of the Subject Property.
6. To effect this purpose, the Lessee is willing to sublease to the Sublessee a portion of the premises between Colton Avenue, 10<sup>th</sup> Street and East F Street only, covered by the Basic Lease. The Lessee and the Sublessee require the consent of the Lessor in order to enter into the sublease. The Lessor is willing to give such consent on the following terms and conditions.

**AGREEMENT:**

**NOW, THEREFORE, IT IS AGREED** by and between the parties hereto as follows:

**Article 1.     TERM, PURPOSE, OBLIGATIONS OF LESSEE AND SUBLESSEE.**

In consideration of the covenants and agreements herein contained and subject to the terms and conditions hereinafter set out, the Lessor hereby consents to the leasing by the Lessee to the Sublessee of that specific area described below covered by the Basic Lease for all or any part of the period commencing April 1, 2012, and extending for a term concurrent with the term of the Basic Lease, which premises may be used by the Sublessee for existing fencing, paving, parking, and building encroachments on APN 0162-105-05-0000, between Colton Avenue, 10<sup>th</sup> Street, and East F Street and only (See Attached Exhibit A, Assessor's Map, Book 0162, Page 10, San Bernardino County), this consent being made subject to the following terms and conditions:

A.     All of the covenants, terms and conditions of the Basic Lease shall continue, be and remain in full force and effect, and the Sublessee, with respect thereto, covenants and agrees with the Lessee and the Lessor jointly and severally to keep and perform the obligations imposed by the Basic Lease on the Lessee. The Sublessee shall keep and perform these obligations and be bound in the same manner as the Lessee by the provisions contained in the Basic Lease, but nothing herein contained shall be deemed to release the Lessee from keeping and performing all the terms, covenants, and conditions to be kept and performed by the Lessee under the Basic Lease or to release the Lessee from any of the Lessee's liabilities or obligations thereunder.

B.     The purpose of entering into the sublease agreement is to quiet title to the Subject Property, while avoiding the costs of further litigation. By accepting the sublease agreement, the Sublessee acknowledges the Lessor's superior and unclouded title to the Subject Property, and agrees to release, waive and relinquish all claims to any title, right, or interest in the Subject Property, other than the leasehold interest created by the sublease.

C.     The Sublessee agrees to take all actions necessary to dismiss the Civil Action, with prejudice, as soon as possible after the sublease is signed by all parties.

D.     The Sublessee agrees not to initiate or file a civil action or any other legal proceeding to assert any right, title, or interest in the Subject Property, except for proceedings necessary to enforce the leasehold interest created by the sublease. If the Sublessee brings any action challenging the Lessor's title to the Subject Property, this Agreement will constitute an Affirmative Defense thereto, and the Lessor shall be entitled to recover from the Sublessee its reasonable costs and attorneys' fees incurred in defending against the challenge to its title, including post-judgment collection costs and attorney's fees. Pursuant to California Evidence Code section 1123(b), this Agreement is enforceable, binding and admissible in a court of law.

**Article 2.     NO FURTHER SUBLETTING OR ASSIGNMENT.**

The parties hereto agree that nothing herein contained shall be deemed or construed to authorize the Lessee or the Sublessee further to let or sublet the leased premises, or further to transfer or assign any interest in the Basic Lease or sublease without the written consent of the Lessor first had and obtained.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in triplicate as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY

By: \_\_\_\_\_  
Director Real Estate  
(Lessor)

CITY OF COLTON

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
\_\_\_\_\_  
(Lessee)

ERNEST GROSSICH

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
\_\_\_\_\_  
(Sublessee)

GARY GROSSICH

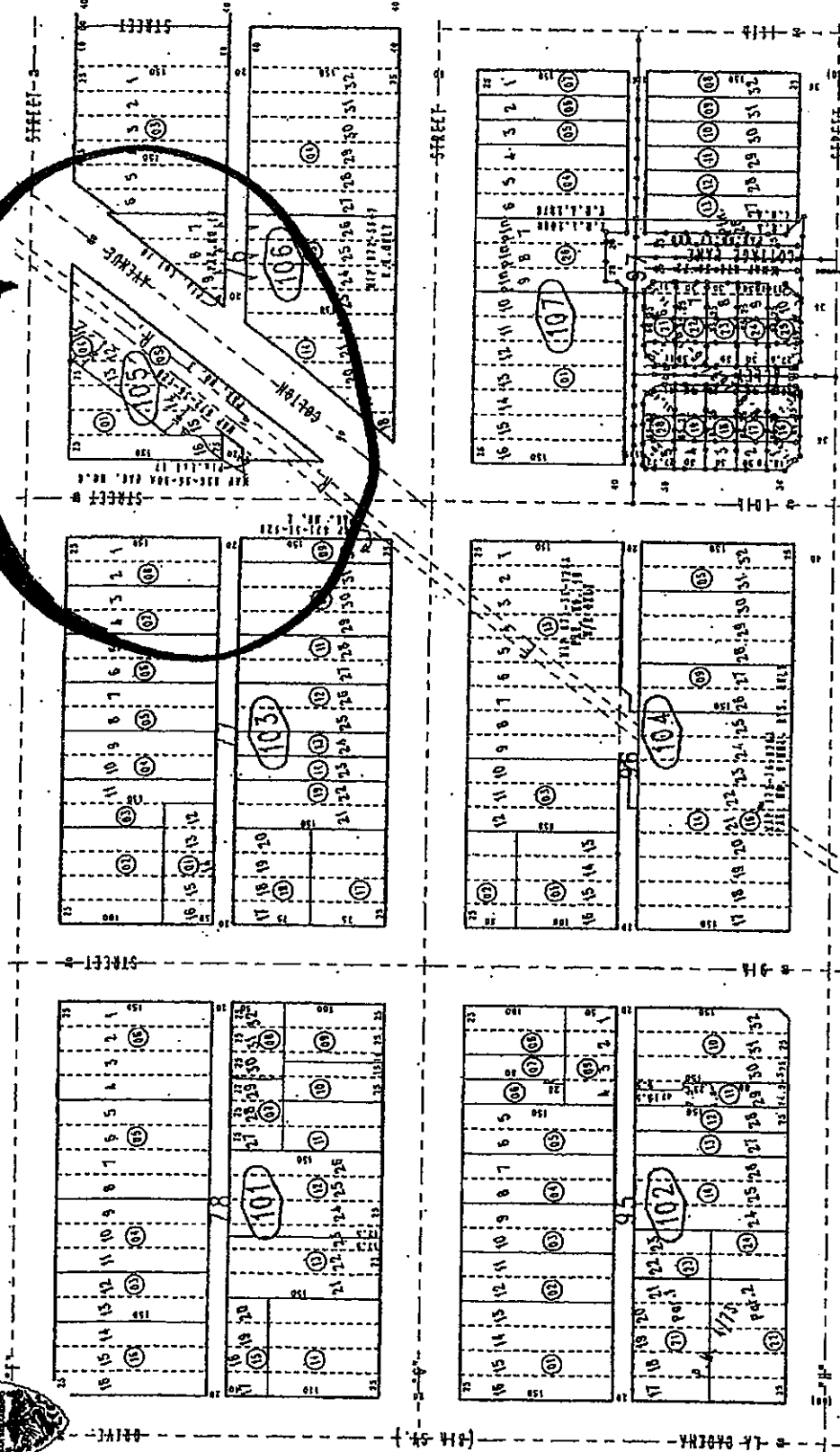
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
\_\_\_\_\_  
(Sublessee)

THIS MAP IS FOR THE PURPOSE  
OF AD VALOREM TAXATION ONLY.

Ptn. Town of Colton  
M.B.9/37 (05)

City of Colton  
City Sales Area

0162-10



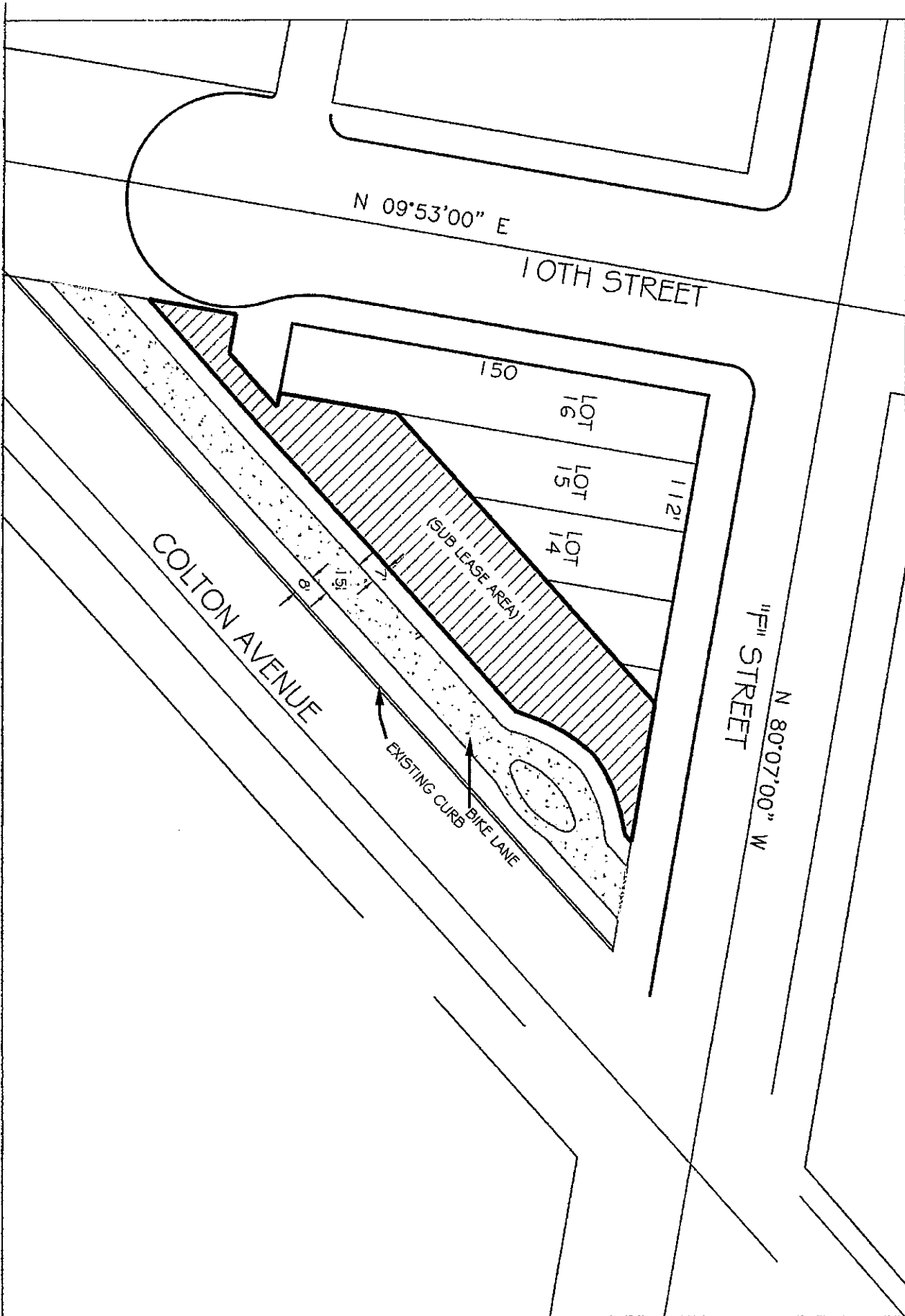
Tract No. 15610-1, M.B. 267/16-18  
Parcel Map No. 501, P.U. 4/73

Assessor's Map  
Book 0162 Page 10  
San Bernardino County

Exhibit  
A



# EXHIBIT -D



ATTACHMENT 2

CONSENT TO SUBLEASE AGREEMENT

BETWEEN UNION PACIFIC RAILROAD, CITY OF COLTON, ERNEST  
GROSSICH AND GARY GROSSICH

Audit: 217453

Folder: 01915-59

## CONSENT TO SUBLEASE

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5. In order to avoid the further expense of appellate litigation, the parties to the Civil Action now seek to resolve all differences between them by entering into a sublease involving a portion of the Subject Property.

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B.     The purpose of entering into the sublease agreement is to quiet title to the Subject Property, while avoiding the costs of further litigation. By accepting the sublease agreement, the Sublessee acknowledges the Lessor's superior and unclouded title to the Subject Property, and agrees to release, waive and relinquish all claims to any title, right, or interest in the Subject Property, other than the leasehold interest created by the sublease.

C.     The Sublessee agrees to take all actions necessary to dismiss the Civil Action, with prejudice, as soon as possible after the sublease is signed by all parties.

D.     The Sublessee agrees not to initiate or file a civil action or any other legal proceeding to assert any right, title, or interest in the Subject Property, except for proceedings necessary to enforce the leasehold interest created by the sublease. If the Sublessee brings any action challenging the Lessor's title to the Subject Property, this Agreement will constitute an Affirmative Defense thereto, and the Lessor shall be entitled to recover from the Sublessee its reasonable costs and attorneys' fees incurred in defending against the challenge to its title, including post-judgment collection costs and attorney's fees. Pursuant to California Evidence Code section 1123(b), this Agreement is enforceable, binding and admissible in a court of law.

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UNION PACIFIC RAILROAD COMPANY

By: \_\_\_\_\_  
Director Real Estate  
(Lessor)

CITY OF COLTON

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
\_\_\_\_\_  
(Lessee)

ERNEST GROSSICH

By: Ernest Grossich  
Title: \_\_\_\_\_  
\_\_\_\_\_  
(Sublessee)

GARY GROSSICH

By: Gary Grossich  
Title: \_\_\_\_\_  
\_\_\_\_\_  
(Sublessee)

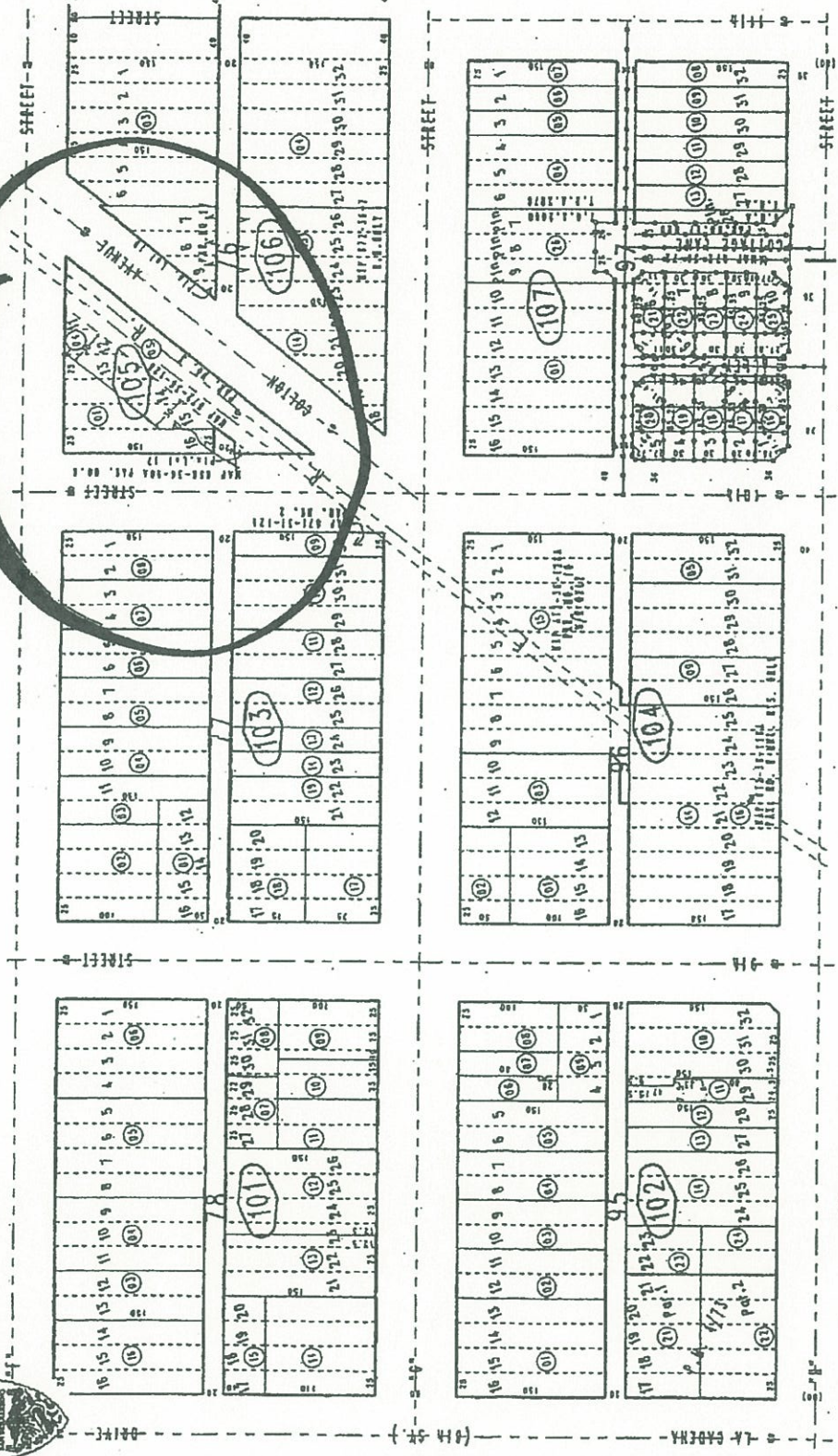


THIS MAP IS FOR THE PURPOSE  
OF AN AD VALOREM TAXATION ONLY.

Ptn. Town of Colton  
M.B.9/37 (05)

City of Colton  
Rate Area

0162-10-2



(16)

(17)

(18)

REVISED

Tract No. 15610-1, M.B. 267/16-18  
Parcel Map No. 501, P.M. 4/73

Assessor's Map  
Book 0162 Page 10  
San Bernardino County

Exhibit  
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